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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|-----------------------|-------------------------------|------------------|
| 09/916,211 | 07/25/2001 | Russell Howard Barton | 130109.407 | 6847 |
| 500 | 7590 | 11/30/2004 | | |
| SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVE SUITE 6300 SEATTLE, WA 98104-7092 | | | EXAMINER CREPEAU, JONATHAN | |
| | | | ART UNIT 1746 | PAPER NUMBER |

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/916,211

Applicant(s)

BARTON ET AL.

Examiner

Jonathan S. Crepeau

Art Unit

1746

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION.** See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): 103 rejections of claims 36, 37, and 43.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: 11-13, 16-20, 22, 36-38 and 43.

Claim(s) objected to: 7, 8 and 32.

Claim(s) rejected: 2-6, 9, 10, 14, 15, 27, 29-31, 33, 34, 40 and 41.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Jonathan Crepeau
Primary Examiner
Art Unit: 1746

Continuation of 2. NOTE: Proposed amendments to claims 5, 14, 29, and 33 are new issues requiring further consideration..

Continuation of 5. does NOT place the application in condition for allowance because: Regarding Applicant's request of withdrawal of finality, this request is not persuasive. The new grounds of rejection concerned dependent claims and were necessitated by Applicant's amendments to the parent claims. In other words, some of the dependent claims had to be newly rejected because the independent claims were amended to include new subject matter. The fact that this subject matter was moved up from a previous, different dependent claim is also not germane because the two claims were not in the same "heirarchy" or "nesting" and were properly rejected using different references prior to final rejection. Stated yet another way, Applicant's presentation of new combinations of these existing limitations necessitated the new rejections.

Applicant's argument regarding claim 40 is also not persuasive. Applicant states that the artisan would select the second percentage to be the same as the first, apparently implying that the percentages must be different. However, claim 40 does not specify such a difference. As such, it is believed that the Examiner's rejection is still proper.

Regarding claim 41, it is noted that no amendment has been proposed to this claim nor have any arguments been set forth. As noted above, Applicant's arguments regarding claims 36 and 43 are persuasive and these claims are now allowable.